

### **REMARKS**

Entry of this Amendment is proper under 37 C.F.R. § 1.116, because the Amendment places the application in condition for allowance for the reasons discussed herein; and does not raise any new issues requiring further search and/or consideration as the amendments amplify issues previously discussed throughout prosecution. The Amendment is necessary and was not earlier presented, because it is made in response to arguments raised in the final rejection. Entry of the Amendment is thus respectfully requested.

Applicants note that the objection to the Declaration has been withdrawn in view of Applicants' September 13, 2001 Declaration. Applicants further note that the rejection under 35 U.S.C. § 102 in view of U.S. Patent No. 6,419,944 has been withdrawn as well as the obviousness-type double patenting rejection over Serial No. 09/760,811.

#### **1. Status of the Claims**

As correctly noted in the Office Action Summary, Claims 1-16, 18, 20-23, 25-28, 30 and 31 are pending. Claims 20-23 and 25-28 are withdrawn as drawn to non-elected subject matter. Claims 1-16, 18, 30 and 31 stand rejected. By this Amendment, Claim 1 has been amended and non-elected Claims 20-23 and 25-28 have been canceled.

The amendment to Claim 1 is not believed to introduce any prohibited new matter. Applicants reserve the right to file divisional and/or continuation applications on any subject matter canceled by way of this or any amendment filed in the instant application.

#### **2. Double Patenting Rejection**

Claims 1-16 and 18 remain provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 3-18 of copending Application No. 09/760,810 (now U.S. Patent No. 6,635,250), and Claims 35-51 of copending Application No. 09/743,852 (now U.S. Patent No. 6,649,589).

Applicants submit with this Amendment a Terminal Disclaimer thereby obviating the rejection. Allowance of the Claim is respectfully requested.

**3. Rejections under 35 U.S.C. § 112, Second Paragraph**

Claims 1-16, 18 and 30 stand rejected under 35 U.S.C. § 112, second paragraph, as purportedly indefinite. Specifically, the claims are rejected for the recitation of the trademarked name HUMICADE™, and because the trademarked name is in parentheses.

Claim 1 has been amended to remove the recitation of the trademarked name HUMICADE™. Thus, Applicants respectfully submit that the rejection of claim 1 (and the corresponding claims which depend therefrom) has been obviated. Accordingly, Applicants respectfully request allowance of Claims 1-16, 18 and 30.

**CONCLUSION**

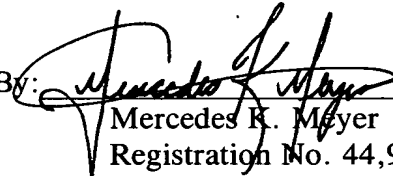
Based on the foregoing, this application is believed to be in condition for allowance. A Notice to that effect is respectfully solicited. However, if any issues remain outstanding after consideration of this Amendment and Reply, the Examiner is respectfully requested to contact the undersigned so that prosecution may be expedited.

In the event any further fees are due to maintain pendency of this application, the Examiner is authorized to charge such fees to Deposit Account No. 02-4800.

Respectfully submitted,

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